

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 21, 2011

In the Matter of CLEMONS, Minors.

No. 298758

Calhoun Circuit Court

Family Division

LC No. 2009-002495-NA

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals by right from an order that terminated her parental rights to her two minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ We affirm because clear and convincing evidence supported termination of respondent's parental rights. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

The children were adjudicated temporary wards based on respondent's no-contest plea to certain allegations made in a petition filed by the Department of Human Services (DHS). The younger of the two children was born testing positive for cocaine. Substance abuse was an issue, as was respondent's volatile relationship with the children's father. Respondent was ordered to comply with a parent-agency agreement (PAA), which included substance abuse treatment, random drug screens, a psychological evaluation, individual therapy, housing, income, and visits with the children. At the time of the permanent custody hearing, substance abuse was no longer an issue, as respondent had complied with substance abuse therapy, relapse prevention, and had not submitted a single positive drug screen since she began testing. However, domestic abuse continued to be a problem, as respondent could not break free of her relationship with the children's father, who refused to comply with any aspect of his PAA.

Despite admonishments from caseworkers and the trial court that the children could not be returned to her unless the father participated in his PAA and improved or she broke off their relationship entirely, respondent continued to associate with the father. Police were called to her apartment following one incident. Respondent told the officers that she and her "boyfriend" had argued about money and he was high on crack cocaine. She alleged that he choked her and

¹ The trial court also terminated parental rights of the children's father, but he is not participating in this appeal.

poked her in the eye. Although he denied the allegation, the children's father was arrested. At other times, the caseworkers made home visits and discovered him at respondent's apartment, observed him checking the mail and walking into the apartment, or suspected he was living there. Once, a maintenance worker reported to the caseworker that he saw respondent and the father together all the time.

At the termination hearing, testimony revealed at least three other reported instances of respondent and the father being together. Respondent admitted to a new caseworker, who had decided to do a home visit at respondent's apartment, that she and the father had an "on again, off again" relationship. On that visit, the caseworker observed an unknown male sleeping on the couch and the father sleeping in the bedroom. Respondent and the father argued and she demanded that he leave, but the father declared that he did not have to go anywhere because "I live here." Respondent and the father were also seen together twice in the weeks immediately before the termination hearing.

Although respondent testified that she was committed to leaving the children's father, the trial court did not believe her. More than ten months had elapsed since the children were adjudicated temporary wards. From the beginning it was made clear to respondent that domestic abuse was an issue that needed to be addressed. She even pleaded no contest to allegations in the petition that she and the father had been involved in an altercation. Thus, respondent's claim on appeal that domestic violence was not part of the original adjudication is untrue. Additionally, when it became clear that the children's father would not fully engage in services, respondent was warned what the consequences were. If she chose to maintain a relationship with a man who was not addressing his substance abuse and domestic violence issues, the environment would not be deemed safe and respondent would not have the children returned to her care. Respondent's behavior for ten months until the termination hearing demonstrated not only continued contact with the children's father, but deceit. Instead of working to address the issue, she tried to hide her relationship from the workers without success. It was only on the eve of the termination hearing that respondent took affirmative steps in separating herself from the father by putting a down payment on an apartment in Grand Rapids. Given respondent's failure to separate from the father in the ten months the case was pending and their continuous relationship for the past seven years, the trial court did not clearly err in determining that plans made on the eve of the hearing and only six days after their last contact were not genuine. This Court must recognize the special opportunity of the trial court to determine the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court also did not clearly err in disregarding the testimony of Carolyn Daniels-Krupp where it was obvious that respondent's counselor got her information solely from respondent and was likely deceived.

Despite the progress respondent made in terms of her substance abuse issue, there was clear and convincing evidence to terminate her parental rights based on her failure to address her relationship with the children's father and the issue of domestic violence. At least one condition leading to adjudication continued to exist and there was no reasonable likelihood that respondent would remedy the condition within a reasonable amount of time. Additionally, as the trial court pointed out, homelessness was a "new" issue that presented itself because, although respondent had appropriate housing at the beginning of the case, it was soon discovered that she allowed the children's father to come and go as he wished, in spite of the fact that he refused to engage in

any services, including visiting the children. It was clear that he was not invested in his children's well-being. Although respondent had income and a support system in place with her parents, it was clear that she was unable to provide the children with proper care or custody and that the children were at risk of harm if returned to her care.

Having found statutory grounds for termination of respondent's parental rights proven by clear and convincing evidence, the trial court then had to determine whether termination of respondent's parental rights was in the children's best interests. This is a heartbreaking case in which respondent was a loving, affectionate, and nurturing parent when she was with the children, but she could not make choices that were in their best interests. When the children lived with respondent's parents, she visited them frequently, sometimes for days at a time. When it became clear that reunification was not likely to take place, the children were then moved a pre-adoptive home. Respondent had two-hour weekly visits, which she did not miss. There were never any concerns expressed regarding respondent's interaction with the children. Still, in the ten months that lapsed between when the children were adjudicated temporary wards and when the termination hearing took place, respondent made no progress in separating herself from the children's father until the week before the termination hearing. Even with court scrutiny and offers of help respondent could not make the decision to break free from him. The children were still young (ages three and two) and were in a pre-adoptive placement where they were doing well. They were entitled to permanence and stability.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro